IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

CRL.A.No. 2198 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRLP.1072/2007 Dated 18/10/2007
CC.410/2002 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOZHIKODE

.....

APPELLANT: COMPLAINANT

M/S.POONKUDY AUTO SERVICE (P) LTD
REP. BY POWER OF ATTORNEY HOLDER
MANOJ KUMAR G, S/O.GOPI
CHAYANKIKKAL HOUSE, RAMAPURAM.

BY ADV. SRI.JOSE KURIAKOSE (VILANGATTIL)

RESPONDENTS: ACCUSED & STATE

1. RAFEEQUE T.K.
M/S.NEW LIGHT AUTOMOBILES
MAVOOR ROAD

2. STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY ADV. SRI. C.M. NAZAR, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. RAMKUMAR , J

==========

CRL.Appeal No. 2198 OF 2007

==========

Dated this the 26th day of November, 2007.

JUDGMENT

The appellant is the complainant in C.C. No. 410/2002 on the file of the Judicial First Class Magistrate-III, Kozhikode. The complaint was one under Section 138 of the Negotiable Instruments Act in respect of a cheque involving a sum of Rs.8000/-. The complaint was dismissed for the reason that there was no representation on 05.06.2003 and no process fee was also deposited. The learned Magistrate not only dismissed the complaint for default but also acquitted the accused under Section 256 Cr.P.C without realising that the accused had not entered appearance. Apart from the fact that the acquittal of the accused under Section 256 Cr.P.C was not warranted, the Magistrate ought to have given an opportunity to the complainant to deposit the process fee. The impugned order dated 06.06.2003 is accordingly set aside and C.C No. 410/2002 will stand restored to file. Since the disposal of the complaint by the court below was before the appearance of the accused, notice to the 1st respondent/accused in this revision is dispensed with.

2. The appellant shall appear before the learned Magistrate without any further notice on 21.12.2007 by which time he shall have paid the requisite process fee.

The Crl.Appeal is disposed of as above.

V. RAMKUMAR, JUDGE.

rv